

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

Case No.: 2:19CR20026-006

The Honorable Gershwin A. Drain

AVINASH THAKKALLAPALLY,

Defendant.

**DEFENDANT AVINASH THAKKALLAPALLY'S
SENTENCING MEMORANDUM**

NOW COMES Defendant, Avinash Thakkallapally, by and through his undersigned counsel, Edward A. Bajoka, and for his sentencing memorandum in this matter, states the following:

I. BACKGROUND AND RULE 11

Defendant Avinash Thakkallapally was indicted on January 15, 2019, and charged with Count 1 – Conspiracy to Commit Visa Fraud and Harbor Aliens for Profit, in violation of 18 U.S.C. § 371. On May 24, 2019, Mr. Thakkallapally entered a guilty plea guilty to Count 1 of the Indictment without a Rule 11 Plea Agreement.

According to the factual basis set forth on the record at the time of the plea, Mr. Thakkallapally conspired with at least one (1) other person to obtain student visas in order to lawfully remain in the United States, knowing that the “University” in which he and others were enrolling was not actually expecting him and other

students to attend classes. Mr. Thakkallapally accepted responsibility for recruiting 54 students and accepting approximately \$15,000.00 in cash from the Government as his role in this case.

Most of the students embroiled in this case were following all U.S. Immigration laws, when on December 12, 2016, the Department of Education announced that it no longer recognized the accreditation agency for many of the schools that these students were attending. After some legal fight to this decision, on December 21, 2016, U.S. District Court Judge Reggie B. Walton denied the ACICS request for a temporary restraining order to stay the decision of the U.S. Department of Education terminating ACICS's status as a federally recognized accrediting agency. On April 3, 2018, the Secretary of Education issued an Order restoring ACICS's status as a federally recognized agency back to December 12, 2016. In the interim, approximately 16,000 international students in the United States were affected by the ACICS losing its accreditation.

Options for students who were now faced with losing their legal status in the United States had to either determine whether their school was accredited by another agency, transfer to another accredited school, or depart the United States if either of those options, did not work out. Unless the affected students enrolled in an accredited university within 15 days of the termination of the accreditation, they

would be out of status. It was at this point that the University of Farmington increased its web presence in order to attract students who were out of status.

While it is true that Mr. Thakkallapally was aware that the school was not conducting classes, he nevertheless believed that he was legally enrolled in an accredited school. Mr. Thakkallapally initially enrolled in the University of Farmington himself. After enrolling, he was encouraged to refer other students to the University. Others who sought enrollment directly from the school were told that they had to go through a recruiter.

II. SENTENCING GUIDELINES CALCULATION

U.S. Probation Officer Alima Patterson drafted the Pre-sentence Investigation Report (PSIR) and submitted a revised report to the parties on September 4, 2019. Defendant, Mr. Thakkallapally, timely presented objections to the PSIR, principally taking issue with Probation's calculation of the scoring of the guidelines with regard to the two-level increase under USSG § 3B1.1.

Probation scored a two-level increase under USSG §3B1.1, claiming that Mr. Thakkallapally was an organizer, leader, manager, or supervisor of a criminal activity that involved one or more participants. "Factors that the Court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the

claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.” An analysis of these factors would lead any reasonable person to the conclusion that the Government’s role in this case was that of an organizer, leader, or manager under the definition of the guidelines. While it is true that Mr. Thakkallapally recruited students and received money in exchange, it was the Government who in this case exercised decision-making authority. The Government funneled students to recruiters like Mr. Thakkapally and others. The government saw the greatest financial reward in this case, pocketing likely millions of dollars in tuition money from hundreds of students. The Government planned every aspect of the sham University of Farmington. There were no Capos, Captains, or made men in this conspiracy. This was not an extensively planned out operation orchestrated by Mr. Thakkallapally. The Government, however, planned out every single detail of this sham University. The Court should not impose a two-level increase under USSG § 3B1.1.

Mr. Thakkallapally’s calculation of the total offense level is **15**. Combined with a Criminal History Score of Zero, **Mr. Thakkallapally’s calculation of the guideline range applicable to him is 18-24 months.**

III. 18 U.S.C. 3553(a) Factors

As this Court is well aware, a district court must give “respectful consideration” to the Sentencing Guidelines, and is permitted “to tailor the sentence in light of other statutory concerns as well.” *Kimbrough v. United States*, 552 U.S. 85 (2007); *see also*, *United States v. Booker*, 543 U.S. 220 (2005); *Gall v. United States*, 552 U.S. 38 (2007); *Rita v. United States*, 561 U.S. 338 (2007). While there is virtually no “substantive difference between a variance and a departure,” courts typically calculate the recommended guideline range under the advisory guidelines, then determine whether to apply an upward or downward “variance” premised on the weighting of one or more of the sentencing factors of 18 U.S.C. § 3553(a). *See Irizarry v. United States*, 553 U.S. 708, 718 (2008) (“the substantive difference between a variance and a departure is nonexistent”); *see also*, *United States v. Grams*, 566 Fed. 3d 683, 686-87 (6th Cir. 2009). In light of the sentencing factors set forth in 18 U.S.C. § 3553(a), a court has discretion to impose any sentence it deems reasonable (within the bounds of the applicable statute and plea agreement). *Gall*, 552 U.S. at 46-47.

In determining an appropriate sentence, the factors to be considered include: (1) the nature of the offense and characteristics of the Defendant, (2) the need for the sentence to reflect the seriousness of the crime, (3) to provide adequate deterrence, (4) to protect the public, and (5) to provide the defendant with needed training or treatment. 18 USC § 3553(a)(1)-(2). In considering those factors and determining

a sentence, “a district court’s mandate is to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of section 3553(a)(2).” *United States v. Wilms*, 495 F. 3d 277, 281 (6th Cir. 2007) (*citation and internal quotations omitted*); *see also* 18 U.S.C. § 3553(a) (“The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in ... this subsection.”).

A. Nature and Circumstances of the Offense

It is without a doubt that Mr. Avinash Thakkallapally knowingly violated the laws relating to U.S. Immigration during the course of the conspiracy. Mr. Thakkallapally’s conduct in this matter is inexcusable. He knowingly benefitted from the conspiracy. Mr. Thakkallapally admits that what he did was wrong, and offers no excuse for his behavior. Mr. Thakkallapally did not get rich from this scheme. On the contrary, he ended up losing his freedom and any opportunity he may have had at achieving the American dream. He takes full responsibility for his involvement in this offense. He admits that it is the biggest regret of his life that he has put himself and his family in this position.

B. History and Characteristics of the Defendant

Mr. Avinash Thakkallapally was born in India. He is an only child to very loving and caring parents. His father is a small-time businessman and farmer. His

mother a homemaker. Avinash is well educated, possessing an undergraduate degree as well as a Master's degree. He works in the field of computer science. Avinash suffers from severe chronic asthma. The pollution and poor air quality in his native India make life there very difficult for him. He reports that adequate asthma treatment is scarcely available and difficult to obtain in his country. On many occasions, he has been hospitalized as a result of his asthmatic condition. He has said that the asthma medication received in the U.S. is far superior to anything that is available in India, including the medication he receives in prison.

C. Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law, to Provide Just Punishment, Adequate Deterrence, and Protect the Public

28 U.S.C. § 994(j) charges the Sentencing Commission with "insur[ing] that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense[.]"

"The analysis [of empirical data on re-offending] delineates recidivism risk for offenders with minimal prior criminal history and shows that the risk is lowest for offenders with the least experience in the criminal justice system. Offenders with zero criminal history points have lower recidivism rates than offenders with one or more criminal history points."); U.S. v. Duane, 533 F.3d 441 (6th Cir. 2008). A

lengthy custodial sentence is not necessary to “provide adequate deterrence and to protect the public.”

As to specific deterrence, Mr. Thakkallapally will never have the opportunity to commit a crime in the United States again. He will be deported to India at the end of his sentence, with little to no chance of ever being able to make it to this country again. Avinash loves this country and loved his life here prior to being incarcerated for this crime. He has lost his job. He has lost his opportunity to become an American. He will return to India where he will face health problems, lack of opportunity, and the shame brought upon him and his family as a result of this case.

Turning to general deterrence, the consequence of deportation is the greatest deterrent that exists here. All immigrants to this country go to great lengths to get here and partake in the benefits that the United States has to offer. There is no country on the planet that can rival the lifestyle that Americans are privileged to live. The risk of deportation for any immigrant who would choose to partake in similar activity to that in this case is a major deterrent in and of itself.

While it is true that a custodial sentence may contribute to collective awareness regarding the misuse of the student visa program, lengthy incarceration is not necessary to make that point. Collective awareness of the consequences of these cases has already been achieved. Mr. Thakkallapally and the local community, as well as his community in India and elsewhere in the world are well aware that

even the allegations related to student visa misuse and an indictment for the misuse, are enough to ruin a person's career, tarnish their reputation, and result in incarceration and deportation. This matter has received national and international media attention. Individuals all over the world know about this case and understand that this type of activity is taken very seriously by the U.S. Government. A custodial sentence greater than the time served, which will be approximately 9 months at the time of sentencing, will not foster general deterrence.

D. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct

Mr. Thakkallapally was indicted with five other co-defendants. There are two companion cases which are listed as related cases. Both of the Defendants in the related cases received custodial sentences of 366 days.

While U.S.S.G. § 3553(a)(6) is not concerned with disparities between co-conspirators sentences, contextually it is important to take into consideration. *United States v. Wallace*, 597 F.3d 794, 803 (6th Cir 2010) (a sentencing judge “may exercise his or her discretion and determine a defendant’s sentence in light of a co-defendant’s sentence”). A sentence of “time served” or a sentence no more severe than that received by the other defendants in the related cases is appropriate in this case.

III. CONCLUSION

Avinash Thakkallapally has spent all of his life engaged in legitimate pursuits. He has lived his life on the right side of the law both in this country and in India until the single instant offense. Mr. Thakkallapally is not a wealthy man and he did not make a substantial amount of money from this conspiracy. Most people involved in serious fraud cases live lavish lives, purchase expensive cars, take expensive vacations, and enjoy the spoils of their profits – yet Mr. Thakkallapally lived the life of a meager student. He ended up in jail, losing his freedom, and will be deported to India with no chance of ever returning to the United States. With an immigration fraud felony charge on his record, it is highly unlikely that he could even obtain entry into any other country. Mr. Thakkallapally has endured enough punishment with the jail time he has served. His greater punishment awaits him after his deportation. Then, he will face financial and professional instability, health problems related to his asthma, and the stigma and shame from his community who will all know about his role in this case.

Mr. Thakkallapally recognizes that he is guilty, and he understands that he had a duty to abide by the regulations of the U.S. Immigration system. He understands that by failing to comply with these requirements, he is guilty. He is ashamed and remorseful for his behavior, knowing that he will have to leave the United States under these unfavorable circumstances.

A sentence of time served is sufficient to meet all the factors outlined in U.S.S.G. § 3553, taking into account Mr. Thakkalapally's age, his lack of any criminal history, the circumstances of the offense and the need to promote respect for the law.

Respectfully submitted,
BAJOKA LAW GROUP, PLLC

Dated: September 5, 2019

/s/ EDWARD A. BAJOKA
Edward A. Bajoka (P70919)
Attorney for Defendant Avinash Thakkallapally
8424 E 12 Mile Rd, Suite 200
Warren, MI 48093
T: (844) 422-5652
bajokalaw@gmail.com

PROOF OF SERVICE

I hereby certify that on September 5, 2019, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein and I hereby certify that I have mailed by U.S. Postal Service the document to any involved non participants.

/s/ Edward A. Bajoka

Edward A. Bajoka (P70919)

Attorney for Defendant Avinash Thakkallapally

Duggirala Sanjeev Rao

H.No 2-6-1164/B/105

Hanuman Residency

Hanamkonda, 506001

Telangana, India

June 20, 2019

RE: Avinash's Character Reference

To the Honorable Gershwin Drain

My name is Duggirala Sanjeev Rao, I am Avinash Thakkallapally's neighbor for almost about 15 years. I know their family very well and in times of need, they helped me expand my business. His father and grandfather are very well respected in the community for their charity and goodness.

I know Avinash Thakkallapally since his high school, he is very close to our family and my kids used to spent most of time in their house. He is very kind to share things with my kids. His family is like perfect neighbor you would wish for.

I came to know about the charges on Avinash Thakkallapally and felt very sorry for him and his family. The local media took this incident as a chance and disrespected their family and the whole community felt bad about it. They do not deserve this, for all the good things their family has done. It is kind of a shock to see how Avinash got wound up in this incident. In my observation, he used to be far from anything that might bring trouble and shame to the family. He is also very responsible towards his friends, he alerted me about my sons' behavior and before it was too late, I was able to take care of it.

My opinion about Avinash Thakkallapally's character is that I always felt like society needs decent people like him, one who is responsible and takes care of community, one who respects and greets elders, one who can be a good asset to the community. For all the years I know him, I think he can lead a normal and regular life if he was given a chance and I believe in second chances and I got one and never looked back. Their family is facing challenging situations in the community and they need his son back to face those situations and restore what has been lost.

Yours sincerely,



Duggirala Sanjeev Rao

Boinpally Rama Rao

H.No 3-11

Gopalpur, Elkathurthy

Warangal urban, 505476

Telangana, India

June 20, 2019

RE: Avinash's Character Reference

To the Honorable Gershwine Drain

I am Boimpally Rama Rao, Avinash Thakkallapally's grandfather. I was born in India, my age is 74, and I have lived my entire life in a village called Gopalpur. I am the local head of this village, over the years, I contributed a lot to the growth, provided clean drinking water to the village, helped farmers in selling the crops and constructed a temple as well.

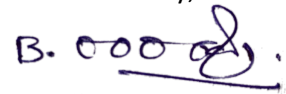
Avinash Thakkallapally is my only grand son and I love him more than anything in this world. He used to come to the village whenever there is a chance and absolutely love the atmosphere. He used to take part in the village development activities, and I thought one day he would take my responsibilities and continue doing the good to this village. People of this village love his kindness, voluntary work and charitable nature.

It broke my heart to hear that my grand son has been charged with a crime. The whole village came to my house worried about him and I regret to be in a position where I cannot offer him any help, except my thoughts and prayers. I do not know much about his life in America, but I can say what kind of person he is in India. He is fragile when asthma attacks him, he is a lovable and fun person in the family, he is kind and charitable. And never ever I have seen a single trait of him leaning towards doing something wrong.

When I see realization in someone for what he did, granting merci is the greatest thing one can do and in my personal experience, I have seen people take that opportunity to start their new life. I do not know much about his life in America, but he can have a decent life in India and when time comes, he can take my responsibilities and help the people of this village.

I sincerely request you to take his health conditions and previous behavior into consideration and send him back as soon as you can and give my grand son a chance to reshape his life towards greater good.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "B. Boimpally", with a horizontal line drawn underneath it.

Boimpally Rama Rao

Manoj Takkallapally
H.No 2-10-912/11
SBH Colony, Subedari
Hanamkonda, 506370
Telangana, India

June 18, 2019

RE: Avinash's Character Reference

To the Honorable Gershwin Drain

I am Manoj Takkallapally, I was born in India and my age is 29 years old. I came to United States on August 2013 and got my master's degree on May 2016 from Louisiana State University, Baton Rouge. I worked as Data Engineer for a Marketing and Advertising agency in Minneapolis, MN and San Diego CA. And returned to India in March 2019 after completing my OPT period.

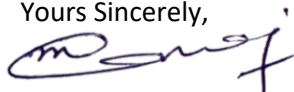
I have known Avinash Thakkallapally almost my entire life, we went to the same college for under graduation and we live in the same city. He is my cousin; my father and his father are brothers. We are more like friends and he lived a decent life and his father is most respected in the community.

I acknowledge that Avinash Thakkallapally has been charged with a crime and I am very sad to hear that, and it saddened entire family and I cannot describe the pain his family is going through. He is calling me from the detention center, and he is sorry for putting himself and the family in such a situation. In India, people take their respect and reputation more seriously than anything else and this event has damaged the reputation of their parents. His parents are confident that he can still be a good citizen and contribute to the society if he is given a chance and I am confident as well.

All the years I know him, I only know him as good individual who is never inclined to do anything that is illegal and never seen him commit a smallest offense in my life. He visited me while I was working in Minneapolis, MN and he did not have a driver license at that time, and I have asked him to drive me back home as I lost my lenses and he did not drive the car and said I don't want to break any rules. He always respected and love the country and like any other immigrant he was there to fulfill his dreams and went through some struggle to find right job that fits him, and I believe those circumstances have led him to that path. I have been talking to him ever since this happened and as the days passing by, he is becoming weak mentally and physically, he is severely asthmatic and the pollution in India will only make his condition worse and I recall him saying how healthy he was after coming into United States and thanking the country and people living in America for taking responsibility for maintaining a healthy environment

I can confidently say that he can put this incident behind and start from beginning and be a good citizen. At this point all he wants is a chance to restore the reputation of his family.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'Manoj', with a stylized flourish at the end.

Manoj Takkallapally

Ashok Rao Thakkallapally
H.No 2-6-1164/B/102
Hanuman Residency
Hanamkonda, 506001
Telangana, India

June 18, 2019

RE: Avinash's Character Reference

To the Honorable Gershwine Drain

I am Ashok Rao Thakkallapally, father of Avinash Thakkallapally. I am writing this letter on behalf of his Mother, Srilatha Boinpally. We have lived our entire life in small city called Hanamkonda, I am a small business man and I do agriculture as well. His Mother is house wife.

Avinash Thakkallapally is our only son and he lived with us until he came to United States. We couldn't send him to anyplace else for education because of his severe asthmatic conditions. After completing his under graduation, he convinced us to send him to United States for higher education and assured us that he will be okay and do better than here in terms of health and profession. We were worried in the beginning and felt happy later seeing that he is doing okay in all aspects of his life.

We are aware that our son has been charged with a crime in United States and we are very sorry for what happened. We raised our son with care, affection, teaching good values and showing him how to earn respect in the society. He is the smallest in our family and loved by everyone, we never received a single complaint on him about anything, he is always nice to people and didn't see him motivated to do anything illegal and not even breaking rules.

It is a shock to see him involved in this crime and we are not aware of anything such big going on in his life. He only mentioned that he had some troubles professionally and assured that he is figuring out and told us not to worry about anything. I can confidently say that my son's nature is good, and I believe his situations and circumstances have caused him to be charged with this crime. I have been talking with him and he sincerely remorse for what had happened. His asthma attacks were greatly reduced while in United States and we are thankful to that. He had his realization and he will never look back to this stage of his life and will be good citizen.

We are worried to death about his severe asthmatic condition and sincerely requesting you to provide necessary health care. We sincerely request you to send our only son back to us as soon as possible and relieve us from this excruciating pain.

Yours sincerely

 T. Srilatha

Ashok Rao Thakkallapally and Srilatha Boinpally

Anudeep Reddy Muddasani

H.No 2-7-153
KD colony, Subedari
Hanamkonda, 506001
Telangana, India

June 21, 2019

RE: Avinash's Character Reference

To the Honorable Gershwine Drain

I am Anudeep Reddy, I was born in India and my age is 28 years. I came to United States on August 2013 and got my master's degree on Dec 2014 from Northwestern Polytechnic University. I worked as software Engineer in Comcast, Westchester PA. And returned to India on June 1st, 2019.

I have known Avinash Thakkallapally since 2015 Aug, we went to the same university for masters in California and we live in the same community. I know him for the past 4 years, and he is very decent and a good guy. He is also very kind-hearted person towards others.

I know that Avinash Thakkallapally has been charged with a crime and it shocked me, I also know their parents and they are worried about him. While pursuing masters, I have seen him as hard-working person and committed to his work and responsible to the community and environment. He always loved United States very much and happy to be in the country. I didn't see him getting into any troubles and always a bit far from things that might bring troubles. He is used to be far from big parties and said that he needs to take of his health very carefully and mentioned that his health condition (severely asthmatic) is much better after coming into United States and he didn't want to change that. I did not think he had any personal problems while pursuing master's that might get him into such troubles, he always seemed to be taking care of himself very well.

I can confidently say that all the time in know Avinash Thakkallapally, he is a decent, hardworking and responsible person towards society. Apart from the reasons or causes why he had to involve himself in this situation, for all the years I known him, I believe he can still be that responsible citizen and lead normal life again and never get into troubles.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Anudeep', with a long horizontal stroke extending to the right.

Anudeep Reddy Muddasani